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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/933,562  | 08/20/2001  | David H. Parker      | 17645-130           | 6565             |
| 33717   | 7590        | 11/03/2004           | EXAMINER            |                  |
| GREENBERG TRAURIG LLP<br>2450 COLORADO AVENUE, SUITE 400E<br>SANTA MONICA, CA 90404 |             |                      | TON, ANABEL         |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 2875                |                  |

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/933,562

Applicant(s)

PARKER ET AL.

Examiner

Anabel M Ton

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-41, 43-46, 48-55, 57-59, 61 and 63-76 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-25, 43-46, 48-55, 57-59, 61, 74, 75 is/are allowed.
- 6) ☒ Claim(s) 26, 27, 30, 32, 33, 35-40, 63, 67-71 and 76 is/are rejected.
- 7) ☒ Claim(s) 28, 29, 34, 38, 39, 41, 64-69, 72, 73 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Allowable Subject Matter***

1. The indicated allowability of claims 26,27,30,31,32,33,35-40,63,67-71 and 76 is withdrawn.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 26,27,30,31,32,33,35-40,63,67-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hon.
3. With regards to claims 26,27,30-33,35 and 36 Hon discloses the claimed invention except for the recitation of "the handle is formed of elements cut out from a structure forming the handle so as to enhance lightness of the handle while at the same time retaining structural strength". With regards to the description "so as to enhance lightness of the handle while at the same time retaining structural strength" this is considered to be a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as

compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). With regards to the handle being formed of elements cut out from a structure forming the handle, Hon satisfies the limitation of the handle being cut out from a structure, since "structure" as recited in the claim is vague.

4. With regards to claims 37 and 63 Hon discloses the claimed invention except for the recitation of "the handle and barrel are ergonomically structured to promote balance in the flashlight". With regards to this limitation, there is no structure recited in the claim to make this limitation distinguish over the prior art of reference, furthermore, reference numeral 20 of Hon teaches a tripod socket which enables the flashlight to be balanced on the base of the handle without tipping forward or backward which satisfies this limitation.

5. With regards to claims 40,70 and 71, Hon teaches the claimed invention except for the recitation of the barrel being substantially egg shaped from a forward end which the forward end is substantially truncated effectively creating a half egg shape to a rear end. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a half egg shape to the barrel of the housing of Hon since matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947).

1. Claim 76 is rejected under 35 U.S.C. 103(a) as being unpatentable over as being unpatentable over Hon and further in view of Jones et al.

2. Hon discloses a barrel the barrel being for mounting batteries such that when the batteries are in the barrel, an array of several batteries are in side by side relationship radially around a central longitudinal axis extending through the barrel a lamp a switch a circuit the switch being for opening and closing the circuit the circuit being between the batteries and the lamp a lens, a cap for the barrel and a pistol grip handle extending transversely from the barrel. Jones discloses a reflective surface with substantially hemispherical protrusions. It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement a reflector as taught by Jones in the device of Hon for the purpose of providing a flashlight with enhanced emitted light.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anabel M Ton whose telephone number is (571) 272-2382. The examiner can normally be reached on 08:00-16:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Art Unit: 2875

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Anabel M Ton  
Examiner  
Art Unit 2875

AMT

  
Stephen Husar  
Primary Examiner